S.B.Civil Revision Petition No.241/2004

Sohan Lal

vs.

Ram Bux & Ors.

DATE OF ORDER : - 6.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.S.S.Purohit, for the petitioner.
Mr.Rakesh Arora, for the respondents.

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Heard learned counsel for the parties.

This revision petition is against the order dated 6th April, 2004 by which the trial court after holding that the objections, which have been raised by the petitioner against the maintainability of the suit can be decided after the evidence of the parties and, therefore, the plaint of the plaintiff cannot be rejected at this stage on application filed under Order 7 Rule 11 CPC.

Learned counsel for the petitioner submitted that the suit was filed by predecessor in title of the plaintiffs in the year 1965 and that was decreed by the Revenue Court in the year 1967 on the basis of compromise. That suit was for declaration of Khatedari rights. The another suit was filed by the plaintiffs in the Revenue Court for cancellation of the earlier decree , declaration and

partition. That suit was also compromised and the compromise decree was passed by the Revenue Court. The plaintiffs have now filed the third suit and, therefore, the plaintiffs' suit is barred under the provisions of Order 23 Rule 3A CPC as no suit to challenge a compromise decree is maintainable. Further, the suit filed by the plaintiff for declaration of Khatedari rights is also not triable by the Civil Courts in view of the bar under Section 256 of the Rajasthan Tenancy Act. Learned counsel for the petitioner relied upon the two judgments; (i) delivered in the case of Mohan Lal Vs. Ratna reported in 1995 RLR (2) 181, which says that suit to challenge the compromise decree is not maintainable and (ii) this court has decided as back as in the year 1971 in the case delivered in Gopal Lal Vs. Babu Lal & Ors reported in 1971 (Raj.) 164 that claim of the share in the agriculture land is an issue triable by the Revenue Court. It is also submitted by learned counsel for the petitioner that even in case, where sale deed is under challenge and there is a claim of Khatedari rights or share in the agriculture land then also, suit is triable by the Revenue Court, though, it depends upon the facts of the case.

Learned counsel for the petitioner after reading the plaint on the basis of the title given in the plaint submits that the present suit is not for cancellation of the sale deed and further relied upon para no.14 of the plaint in support of his argument on the basis that plaintiff has not valued the suit for

cancellation of the sale deed. Therefore, the suit filed by the plaintiffs is not for cancellation of sale deed.

I considered the submissions of learned counsel for the petitioner. So far as the contention of learned counsel for the petitioner that the suit for declaration of Khatedari rights in relation to agriculture land is maintainable only in Revenue Court and Civil Court has no jurisdiction, there cannot be any dispute. The suit for partition for agriculture land is also maintainable only in the Revenue Court. The earlier two suits, which are alleged to be between the parties were filed for declaration of the Khatedari rights and for relief of possession. Therefore, first suit was triable by the Revenue Court is not in dispute. The second suit was filed for cancellation of the earlier decree and for declaration and in that suit compromise was filed according to the petitioners. On the basis of said compromise, the decree was granted. Therefore, that suit if was only for declaration of any right under the Rajasthan Tenancy Act and a decree for partition was passed, that could have been done by the Revenue Court.

So far as in this suit, there is relief of cancellation of sale deed dated 30th July, 2001 also apart from other reliefs, which is clear from the prayer made in the plaint. This relief cannot be granted by the Revenue Court. The

heading of the suit cannot govern the suit. The plaint is required to be read as a whole. What relief had been claimed is clear from the prayer clause of the plaint. The argument advanced by learned counsel for the petitioner is absolutely misconceived. What reliefs have been claimed is required to be seen from the plaint and cannot be construed by reading only heading of the plaint and the para for valuation of the suit only. If there is a relief claimed and if according to defendant, there is no valuation given in the plaint for the relief and no court fees has been paid, the objection could have been about the improper valuation of the suit and for non-payment of the court fees. But on this count, it cannot be said that the suit has not been filed for that relief, which is clearly mentioned in the prayer. The trial court in its order very categorically mentioned that the plaintiffs filed the suit for relief of cancellation of the sale deed dated 30th July, 2001. Therefore, the contention of learned counsel for the petitioner that suit has not been filed for cancellation of the sale deed dated 30th April, 2001 is rejected.

Looking to the complicity of the facts and the nature of the proceedings taken, it cannot be said that the suit is barred by any law at this stage because in case the suit is found triable by Civil Court for one relief and triable for Revenue Court then also, the ouster of the jurisdiction of the Civil Court cannot be inferred. Even if a relief is barred by any law then that relief can be

rejected, but simply because one relief is barred by law, second relief cannot be denied unless the second relief has foundation only on first relief.

In view of the above, it will be appropriate that petitioner should take all his objections in his written statement so that the court may apply its mind to the total facts of the case and in case it is found that the successive suits have been filed to harass the petitioner then the Civil Court is quite competent to reject the suit and award compensation to the petitioner.

In view of the above, I do not find any force in this revision petition. Hence, the revision petition of the petitioner is dismissed and the stay order granted by this court is vacated. Therefore, the stay petition is also dismissed.

(Prakash Tatia), J.

c.p.goyal/-